

General Terms and Conditions of Business (state 01.08.2009)

I. General

These conditions form the basis of all business conclusions, also of those which will be made with us in the future. Deviating conditions of the customer that we do not explicitly accept in writing are not binding for us, even if we do not explicitly contradict them.

II. Quotations, order acceptance and prices

1. Our quotations are always without engagement. The quoted products are subject to prior sale.
2. Indications as to measure and weight as well as samples are subject to usual deviations.
3. Polymeric resin systems and additives are delivered ex works. Required packaging will basically be charged. We reserve the right to calculate an extra charge for little order quantities.
4. The prices are given net cash ex works plus freight, toll and legal VAT. Unforeseen additional expenditures arising from the execution of the delivery and for which extra charges have not been agreed, are at customer's charge except when we are responsible for their cause.
5. Any increase in our costs, e. g. changes in the purchase prices, salaries, freight charges, customs duties and taxes as well as other charges entitle us to a corresponding price adjustment.

III. Delivery

1. Delivery is made ex our works on customer's risk. Delivery free buyer's address means carriage-free by post or full railway station of the customer – unloading not included.
2. Transport packaging's and external packaging's are taken back by the "Interseroh Entsorgungs- und Dienstleistungs GmbH".
3. Delivery dates are only valid when they have been explicitly confirmed by the supplier. When the contract is concluded in writing, the confirmation of the delivery date has also to be made in writing.
4. Insurances against damages in transit, losses in transit and breakage are only taken out on customer's explicit request at his charge. Any notices of damage are to be notified immediately after receipt of the goods and confirmed in writing.
5. The customer has to accept partial deliveries except when he proves that the acceptance of the same is unreasonable for him.
6. The fulfillment of the contract and the observation of the delivery time and time of performance presuppose:
 - a) the punctual and correct self-supply through our suppliers except when we are to blame for the non-delivery or the delay,
 - b) the correct and punctual execution of the participatory acts which the customer is responsible for.
7. The delivery times and times of performance are prolonged by the period by which the customer does not meet his obligations towards us as well in case of an industrial action for the duration of the disturbance caused by the same. The same applies to the dates of delivery and performance.

IV. Payment

1. Payment has to be effected cash in EUROS within 30 days from date of shipment without any deduction.
2. The customer must not claim any right of retention from other business transactions or from the current business relationship. The set-off on the part of the customer is excluded unless the counterclaim is undisputed or has been ascertained to be legally valid.
3. If the customer comes into a delay in payment, we are entitled to declare all our claims immediately due and to take back the goods. In addition to this, we can forbid the resale, the reprocessing and the removal of the goods. The taking back of the goods does not constitute a revocation of the contract.
4. When we get to know circumstances later which bring about an essential deterioration of assets and which endanger our claim for payment, we are entitled to claim payments in advance and immediate payments of all open invoices, even of those not being due yet.
5. In the cases of point nos. 3 and 4 we can revoke the direct debit authorization (V/5) and claim payments in advance for still outstanding deliveries.
6. The consequences mentioned under point nos. 3 – 5 can be averted by the customer by providing securities to the amount of our endangered claim of payment.
7. As for the rest, the statutory regulations relating to the delay in payment remain untouched.

V. Reservations of ownership

1. All goods supplied by us remain our property (conditional goods) until all our claims are fulfilled, especially also the respective balance claims to which we are entitled within the bounds of the business relationship. This also applies to future and to conditional claims and also when payments are made on particularly described claims.
2. Treatment and processing of the conditional goods are made for us as producer within the meaning of § 950 German civil code without committing ourselves. The treated and processed goods are regarded as conditional goods within the meaning of point no. 1. In case of treatment, connection and mixing of the conditional goods with other goods on the part of the customer, we are entitled to the co-ownership of a new article to the amount of the invoice value of the conditional goods. If our ownership becomes invalid by connection or mixing, the customer transfers to us already now the rights of ownership of the new existence or object which he is entitled to the extent of the invoice value of the conditional goods and keeps the same safe for us free of charge. On our part, there are co-ownership rights of the conditional goods within the meaning of point no. 1.
3. The customer is only allowed to sell the conditional goods in the ordinary course of business on his normal trading conditions and as long as he is not in default provided that the claims resulting from the resale according to point nos. 4 to 6 are transferred to us. He is not entitled to further dispositions of the conditional goods.

4. The claims of the customer resulting from the resale of the conditional goods, also in the course of the installation as essential part of an estate, are transferred to us already now. They serve to the same extent for the safeguarding as do the conditional goods. If the conditional goods are sold together with other goods not sold by us, the claim resulting from the resale is transferred to us to the amount of the invoice value of the conditional goods. When goods are sold of which we have co-ownership shares according to point no. 2, we are ceded a share that corresponds to our co-ownership share.
5. The customer is entitled to collect claims from the resale unless we revoke the direct debit authorization in the cases mentioned in paragraph IV/5. On our demand, he is obliged to inform his customers immediately on the ceding to us – as far as we do not do this by ourselves – and to give us the information and documents being required for the collection. The customer is under no circumstances entitled to a further ceding of the claims. This also applies to factoring transactions which are not permitted to our customer either due to our direct debit authorization.
6. The customer is obliged to inform us immediately on a seizure or other restrictions through third parties.
7. If the value of the existing securities exceeds the secured claims by more than 20 % in total, we are on demand of the customer in this respect obliged to release securities as per our choice.

VI. Notice of defects

1. Obvious material deficiencies have to be notified in writing within 7 days after receipt of the goods. For businessmen, this also applies to non-obvious deficiencies as far as the same can be detected by means of a reasonable examination. As for the rest, for businessmen applies § 377 Commercial Code.
2. In case that defects become discernible during the processing only, complaints can only be considered when the processing of these faulty objects is stopped immediately.
3. If the customer does not give us immediately the opportunity of convincing ourselves of the defect, if he particularly does not place immediately the goods or samples of the same about which there have been complaints, at our disposal on demand, all claims arising from the defect will become ineffective.

VII. Warranty Claims and Claims for Damages

1. In case of defective goods, we will remedy the defect as per choice or make a replacement with intact goods and take back the defective goods or pay compensation for the minimum value. Towards businessmen, the application of § 439 section 2 German civil code is excluded. In case of failure to remedy the defect or impossibility of making a replacement, the customer is allowed to reduce payment or – if it is not a building performance which is subject-matter of the warranty – to withdraw from the contract as per his choice.
2. Claims for damages, also with regard to so-called consequential harms caused by a defect, are excluded as far as they are not based on a gross breach of the contractual or legal duties which we are responsible for.
3. The exclusions of liability included in section 2 do not touch the liability resulting from the breach of the duty which is of essential importance for the reaching of the contract purpose or which has to be replaced because of a nature or shelf life guarantee according to § 443 German civil code. Furthermore, they do not touch possible claims resulting from the product liability law.
4. The claims mentioned in section nos. 1 and 2 become statute-barred after 2 years after transfer of risk to the customer; in case of an object which has been used in accordance with its usual way of use for a building and which has caused the faultiness of the same, after 5 years as far as the customer is consumer in the sense of § 474 German civil code. As for the rest, the claims become statute-barred after 6 months. For synthetic resin products, the shelf life is of essential importance. It is indicated on the label of each product.
5. The statements on our data sheets are not binding. The customer is obliged to observe them and to take note of their content before starting using the product. The statements on the data sheets do not relieve the customer from the duty to check by himself if the product is suitable for the respective intended purpose.

VIII. Withdrawal from the contract

The customer can only withdraw from the contract within the bounds of the legal provisions when we are responsible for the breach of duty. In case of breach of duties, the customer has to declare within an adequate period of time after having been requested by us whether he will - as a result of the breach of duty - withdraw from the contract or insist on the delivery. In case of defects, however, the legal provisions remain decisive. If the customer - without being entitled hereto as per the legal provisions - withdraws from the contract or if he strives for its cancellation without justification, we have the choice to insist on the fulfillment of the contract or to agree to the cancellation of the contract. In the latter case, the customer is obliged to pay - as per our choice - a lump sum of 15 % of the gross invoice amount as compensation for damages or the really caused loss.

IX. Governing law, place of jurisdiction

1. For all transactions, export trade included, the German law is applicable. The application of the UN agreement upon merchandise purchase contracts (CISG) is excluded.
2. When the requirements for an agreement on venue according to § 38 of the Civil Procedure Rules are fulfilled, the place of jurisdiction for all claims is the seat of our company.